



UNITED STATES PATENT AND TRADEMARK OFFICE

54
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,901	12/01/2000	Michael J. Recchia JR.	652 P 006	3682

27717 7590 11/06/2002

SEYFARTH SHAW
55 EAST MONROE STREET
SUITE 4200
CHICAGO, IL 60603-5803

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/06/2002

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/727,901	RECCIA, MICHAEL J.	
	Examiner	Art Unit	
	Robert Madsen	1761	

The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION

THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 July 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-15 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

The Amendment filed July 24, 2002 has been entered. Claim 20 has been added. Claims 1-20 remain pending, claims 16-20 were withdrawn from further consideration in Paper No. 8.

Election/Restrictions

Applicant's elected claims 1-15 with traverse in Paper 8. The traversal is on the ground(s) that in light of the amendment to claim 16 and the addition of claim 20, claims 16-18 and 20 are now sufficiently close together and recite similar structures. This is not found persuasive because the structure recited in claims 1-15 are directed to a bag comprising *one solid wall* thermoplastic sheet and mesh sheet that are sealed at the edges whereas claims 16-18 and 20 do not require a *solid wall* thermoplastic sheet, do not require the thermoplastic sheet to be sealed at the edges with the mesh sheet (only the end sections), and require a mesh sheet to be in a central section. Thus the invention of claims 16-18, 20 reads on a mesh bag with reinforced ends or a bag divided with a central mesh sheet divider with the ends of the bag reinforced by a thermoplastic sheet. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are:

The location of the seals between the thermoplastic sheet and mesh sheet (i.e. sealed together *alongside edges*) implies a the entire perimeter of the thermoplastic sheet and mesh sheet are sealed together. Thus the bag cannot be *for containing* anything since it is already sealed-. However, in light of the specification, examiner is taken *alongside edges* to be *along side edges*.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamagata (JP411130089A) interpretation A.

Yamagata '089 teaches various embodiments and features and can be applied as prior art using several interpretations. The following rejection is based on what will be referred to henceforth as Interpretation A.

Regarding claims 1 and 2, Yamagata '089 teaches a first thermoplastic sheet (item 2 in drawings), a mesh sheet (item 3), and a second thermoplastic sheet (item 30)

wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata '089 teaches a first seal (created by sealing section 9 to section 11) close to the first end of the mesh sheet (item 3) and first end of the first thermoplastic sheet (item 8/9) as recited in claim 2 (See Figure 5A), and the first sheet folds over the mesh sheet (item 8/9 folds over to seal at the 9/11/3 interface). Yamagata '089 also teaches a second seal (item 5c furthest from item 30) defined between (i.e. located between) the second sheet (item 30) and the mesh sheet (item 3) the first and second sheets extend beyond the mesh sheet and lie together (in the 10a portion of the first sheet). (See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,4,6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation A as applied to claim 1 and 2 above, further in view of Meister (US 3024962).

Regarding claims 3 and 4, Yamagata '089 teaches a third transverse seal spaced from the mesh sheet to seal the first and second sheets together (i.e. at the seal 5c nearest to item 30). The second sheet (item 30) forms a header (item 29) with the first sheet (item 2), wherein the second sheet is significantly thicker than the first and

comprises a hole(Paragraphs 0029-0031, Figures 5A and 5B). Yamagata '089 is silent in teaching the seal is *between* the first and second sheets. Meister teaches a similar bag configuration wherein an additional, thicker sheet is applied at one end to form a header, wherein the header also comprises a hole. Furthermore, Meister teaches adhering the header may be formed by positioning the additional sheet between the bag walls or on the outside of one wall. (See Figures 3-6, Column 1, line 9 to Column 2, line 4, Column 2, lines 54 to Column 4, line 65). Therefore, it would have been obvious to modify the third seal of Yamagata '089 such that the seal is *between* the first and second sheets (i.e. placing item 30 on the *outside* of the first thermoplastic sheet) since Meister teaches header forming sheets such as Yamagata's item 30 can be located either between the bag walls or on the exterior of one of the bag walls. One would have been substituting one header position for another for the same purpose: attaching a thick sheet (relative to the bag walls thickness) to provide a header with a hole at the end of a bag.

Regarding claim 6, Yamagata '089 teaches a third sheet (item 11) is joined to both the first sheet and the mesh sheet by the first seal line (i.e. via the seal at 9/11) on the *exterior* the mesh sheet (see Figure 5 A). However, in another embodiment Yamagata '089 also teaches a similar third sheet may be on the *interior* of the surface of mesh sheet , albeit not in combination with the second sheet recited in claims 1-4 (See Figures 1A and 1B and paragraphs 0009 to 0020 of the English translation). However, it would have been obvious to modify the embodiment of Figure 5(A) such

that the third sheet is on the interior of the bag since one would have been substituting means for sealing an end of the bag for another for the same purpose.

Regarding claim 7, the first sheet is positioned on the exterior surface of the mesh sheet at the first seal (i.e. 12 a in Figures 1 (A) and 5 (B)).

Regarding claim 8, the third sheet (item 11) is smaller than the first (item 2/8/9).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation A, as applied above to claims 1 and 2, further in view of Shigeta et al. (JP 407315391A).

Yamagata '089 teaches produce, but is silent in teaching onions. However, Shigeta et al. are relied on as evidence of the conventionality of these produce bags comprising a mesh and thermoplastic sheet containing onions (See English Abstract, English Detailed Description Paragraphs 0008-0009). Therefore, it would have been obvious to include onions in the bag of Yamagata '089 since one would have been substituting one known produce for another in a bag comprising a mesh sheet and a thermoplastic sheet.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation A, as applied above to claims 1 and 2

Regarding claim 9, Yamagata '089 teaches a third sheet (i.e. item 11, synthetic resin tape) is joined to the mesh sheet on the exterior surface of the bag to seal the folded portion of the first thermoplastic sheet to the mesh (see Figure 5 A) and also

Art Unit: 1761

teaches a similar thermoplastic sheet may be on the *interior* of the surface of the bag, albeit not in combination with the features recited in claim 1 (See Figures 1A and 1B and paragraphs 0009 to 0020 of the English translation). Therefore it would have been obvious to modify the embodiment of Figure 5(A) such that the third sheet is on the interior of the bag since one would have been substituting one attachment location for another for the same purpose.

Regarding claim 10, the third sheet is joined to the first and mesh sheets by the portion 9, and thus the first sheet (2 at the portion 8/9) is positioned on the exterior surface of the mesh sheet at the first seal (Figures 1 (A) and 5 (B)).

Regarding claim 11, the third sheet (item 11) is smaller than the first (item 2/8/9 in Figures 1(A) and 5(A)).

Regarding claim 12, the first seal line (formed at 9) is located close to the first end of both mesh and first sheets (See Figure 5(A)).

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) Interpretation A as applied to claims 12 and 1 above, respectively, further in view of Fox et al (US 6024489) and Cammack (US 5741076).

Although Yamagata '089 teaches the mesh lines are diagonal and are silent in teaching strands perpendicular and parallel to the edges, Fox et al. and Cammack (See Abstracts and Figures in both) are each relied on as further evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to

modify Yamagata '089 and include parallel and perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) Interpretation A as applied to claim 1 above, further in view of Welles (US 4099666).

Although Yamagata '089 is silent in teaching bunching the bag, it was well known feature in the art to do so with bags having similar physical features. Welles is relied on as evidence of the conventionality of providing two sheets, one folded over the other and a second sheet providing wicket holes, similar to Yamagata '089 item 31 in Figure 5A, wherein the bag is also provided with a bunching member. Welles teaches the wicket holes are used for holding the bag while filling and the bunching member is used for sealing (Figure 5, Column 4, line 53 to Column 5, line 17). Therefore, it would have been obvious to include a bunching member on the bag since one would have been substituting one closing means for another for a food multilayer food bag.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation B in view of Yamagata (JP200318776)

As discussed previously Yamagata '089 may be interpreted in at least two ways this is Interpretation B and is as follows.

Regarding claims 1-4, Yamagata '089 teaches a bag comprising a first thermoplastic sheet (item 2 in drawings), a mesh sheet (item 3), and a second thermoplastic sheet (synthetic resin tape item 11) wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata '089 teaches a first seal line at 5c (Figures 5A and 5B), which is close to the first end of the mesh sheet and first end of the first thermoplastic sheet as recited in claim 2, and the first sheet folding over the mesh sheet (items 2/10 fold over item 3 in Figure 5B). Yamagata '089 also teaches a second seal (item 12a of item 11 in Figure 5A) which is between the second sheet (item 11 and the mesh sheet (item 3). Yamagata '089 further teaches a third seal, as recited in claims 3 and 4, is formed when the bag is closed between the first sheet (item 2) and second thermoplastic sheet (item 11) (i.e. at the 9/11 interface), which is spaced from the mesh sheet (item 3). Yamagata '089 also teaches first sheet (item 2/8/9) extends beyond the mesh sheet (i.e. beyond 12 a) to lie against the second sheet (i.e. when item 9 is sealed to 11) as a means for securing a folded portion of the bag (i.e. a portion of the first sheet) to seal the bag (See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030.) However, Yamagata '089 is silent in teaching the first and second sheet extend beyond the mesh *together* as recited in claim 1 .

Yamagata '776 teaches an alternative location of a sheet used to provide a means for securing a closure of a bag comprising a mesh sheet (i.e. item 2 secures the folded portion of the bag , item 3 , in the Figures) wherein the means for securing the closure extends *beyond* the bag (Figures, Paragraph 0002-0007). Therefore, it would have been obvious to modify first and second sheet extend beyond the mesh *together*

since one would have been substituting one means for securing a fold to close a bag comprising a mesh sheet for another.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation B in view of Yamagata (JP200318776), as applied to claim 1 above, further in view of Shigeta et al. (JP 407315391A).

Yamagata '089 teaches produce, but is silent in teaching onions. However, Shigeta et al. are relied on as evidence of the conventionality of these produce bags comprising a mesh and thermoplastic sheet containing onions (See English Abstract, English Detailed Description Paragraphs 0008-0009). Therefore, it would have been obvious to include onions in the bag of Yamagata '089 since one would have been substituting one known produce for another in a bag comprising a mesh sheet and a thermoplastic sheet.

Claim 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation B in view of Yamagata (JP200318776), as applied to claim 1 above, further in view of Fox et al (US 6024489) and Cammack (US 5741076).

Although Yamagata '089 teaches the mesh lines are diagonal and are silent in teaching strands perpendicular and parallel to the edges, Fox et al. and Cammack (See Abstracts and Figures in both) are each relied on as further evidence of the conventional produce bag design comprising a mesh sheet wherein strands are

perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify Yamagata '089 and include parallel and perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) interpretation B in view of Yamagata (JP200318776), as applied to claim 1 above, further in view of Welles (US 4099666).

Although Yamagata '089 is silent in teaching bunching the bag, it was well known feature in the art to do so with bags having similar physical features. Welles is relied on as evidence of the conventionality of providing two sheets, one folded over the other and a second sheet providing wicket holes, similar to Yamagata '089 item 31 in Figure 5A, wherein the bag is also provided with a bunching member. Welles teaches the wicket holes are used for holding the bag while filling and the bunching member is used for sealing (Figure 5, Column 4, line 53 to Column 5, line 17). Therefore, it would have been obvious to include a bunching member on the bag since one would have been substituting one closing means for another for a food multilayer food bag.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

Art Unit: 1761

1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,2,9-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Yamagata (JP411130089A).

Regarding claims 1 and 2 , Application '211 claims an onion bag formed by a thermoplastic sheet and a mesh sheet, sealed together along the edges of the sheets end one end having the mesh sheet spaced from one bag end and one bag end being formed by folding over the thermoplastic sheet and a transverse seal across the width of the bag (i.e. claimed as a seal line to form a header), as recited in claims 1,2 and 5. However, '211 does not claim a second thermoplastic sheet wherein the second sheet and first sheet extend beyond the mesh sheet together or a second seal as recited in claim 1.

Like application '211, Yamagata '089 also forms produce bag having a mesh wall (item 3) , a solid plastic wall (item 2) , and a header at one end (item 29). However, Yamagata '089 further teaches adding a second thermoplastic sheet inside the header to reinforce the header and further teaches a second seal at the end opposite of the header. Yamagata '089 teaches a first thermoplastic sheet (item 2 in

drawings), a mesh sheet (item 3), and a second thermoplastic sheet (item 30) wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata '089 teaches a first seal (created by sealing section 9 to section 11) close to the first end of the mesh sheet (item 3) and first end of the first thermoplastic sheet (item 8/9) as recited in claim 2 (See Figure 5A), and the first sheet folds over the mesh sheet (item 8/9 folds over to seal at the 9/11/3 interface). Yamagata '089 also teaches a second seal (item 5c furthest from item 30) defined between (i.e. located between) the second sheet (item 30) and the mesh sheet (item 3) the first and second sheets extend beyond the mesh sheet and lie together (in the 10a portion of the first sheet). (See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030).

Therefore, it would have been obvious to modify Application '211 and include a second sheet since Yamagata teaches this is used to provide strength for a header and one would have been substituting one header design for another for produce bag having a mesh wall and a thermoplastic wall. It would have been further obvious to include a second traverse seal since Yamagata '089 teaches sealing the end opposite the header with a second seal and one would have been substituting one means for sealing a produce bag with a header for another.

This is a provisional obviousness-type double patenting rejection.

Regarding claims 9-12, Application '211 is does not claim a third sheet.

However, Yamagata '089 teaches a third sheet (i.e. item 11, synthetic resin tape) is joined to the mesh sheet on the exterior surface of the bag to seal the folded portion of the first thermoplastic sheet to the mesh (see Figure 5 A) and also teaches a similar

thermoplastic sheet may be on the *interior* of the surface of the bag, as recited in claim 9(See Figures 1A and 1B and paragraphs 0009 to 0020 of the English translation).

Yamagata '089 further teaches a third sheet is joined to the first sheet and mesh sheet (by the portion 9) , and thus the first sheet (2 at the portion 8/9) is positioned on the exterior surface of the mesh sheet at the first seal, as recited in claim 10 (Figures 1 (A) and 5 (B)). Yamagata '089 further teaches the third sheet (item 11) is smaller than the first as recited in claim 11(item 2/8/9 in Figures 1(A) and 5(A)). Furthermore, the first seal line (formed at 9) is located close to the first end of both mesh and first sheets, as recited in claim 12 (See Figure 5(A)).

Therefore it would have been obvious to further modify Application '211 to include a third sheet that is joined to the first seal line and the first sheet and mesh sheets positioned on the inside surface of the mesh sheet, as recited in claim 9, wherein the first sheet is positioned on the exterior surface of the mesh sheet as recited in claim 10, the third sheet smaller than the first sheet, as recited in claim 11, and wherein the first seal line is located close to both the mesh and first sheets, since Yamagata '089 teaches the third sheet in combination with a first sheet, mesh sheet, and first seal line having the recited structures for the purpose of sealing the end of a bag opposite the header end. One would have been substituting one means for sealing a bag end for another for the same purpose: a produce bag having a mesh wall, a solid plastic wall, and a header.

This is a provisional obviousness-type double patenting rejection.

Claims 3-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Yamagata (JP411130089A) as applied to claim 1,2,9-12 above, further in view of Meister (US 3024962).

Regarding claims 3 and 4, Application '211 is does not claim a third transverse seal between the first and second sheets. However, Yamagata '089 teaches a third transverse seal spaced from the mesh sheet to seal the first and second sheets together (i.e. at the seal 5c nearest to item 30). The third seal is provided to secure the second sheet (item 30) in place as a header (item 29) to the first sheet (item 2), wherein the second sheet is significantly thicker than the first and comprises a hole(Paragraphs 0029-0031, Figures 5A and 5B). Meister teaches is relied on as further evidence of the conventionality of securing a thicker sheet at one end of a bag to form a header, wherein the header also comprises a hole. Furthermore, Meister teaches adhering the header may be formed by positioning the additional sheet either between the bag walls or on the outside of one wall. (See Figures 3-6, Column 1, line 9 to Column 2, line 4, Column 2, lines 54 to Column 4, line 65). Therefore, it would have been obvious to modify the third seal of Yamagata '089 such that the seal is *between* the first and second sheets (i.e. placing item 30 on the *outside* of the first thermoplastic sheet) since Meister teaches header forming sheets such as Yamagata's item 30 can be located either between the bag walls or on the exterior of one of the bag walls. One would have been substituting one header position for another for the same purpose:

attaching a thick sheet (relative to the bag walls thickness) to provide a header with a hole at the end of a bag.

This is a provisional obviousness-type double patenting rejection.

Regarding claim 5, Application '211 claims onions.

This is a provisional obviousness-type double patenting rejection.

Regarding claim 6-8, Application '211 does not claim a third thermoplastic sheet, but Yamagata '089 teaches a third sheet (item 11), smaller than the first sheet as recited in claim 8, may be used join to both the first sheet and the mesh sheet, opposite the end of the bag with the header, by a first seal line (i.e. via the seal at 9/11) on the *exterior* the mesh sheet (see Figure 5 A) or on the *interior* of the surface of mesh sheet as recited in claim 6 (See Figures 1A and 1B and paragraphs 0009 to 0020 of the English translation), and thus the first sheet (2 at the portion 8/9) is positioned on the exterior surface of the mesh sheet at the first seal, as recited in claim 7 (Figures 1 (A) and 5 (B)). Therefore it would have been obvious to include a third thermoplastic sheet, which was smaller than the first sheet, on the interior surface of the mesh sheet, with first sheet on the exterior of the mesh sheet, and at the end opposite the header in the bag of Application '211, since Yamagata '089 teaches the third sheet is used to seal the end opposite the header and one would have been substituting one type of seal for another for the same purpose: a produce bag with a mesh wall, solid plastic wall , and a header formed on one end.

This is a provisional obviousness-type double patenting rejection.

Claim 13 and 14 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Yamagata (JP411130089A), as applied to claims 1,2,9-12 above, further in view of Fox et al. (US 6024489).

Although Application '211 does not recite the mesh lines are perpendicular and parallel to the edges, Fox et al. (See Abstracts and Figures) are relied on as evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify '211 and include parallel and perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

This is a provisional obviousness-type double patenting rejection.

Claim 15 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15-17 of copending Application No. 09/481211 in view of Yamagata (JP411130089A), to claims 1,2,9-12 above, further in view of Welles (US 4099666).

Although '211 does not claim bunching the bag, it was well known feature in the art with bags having similar physical features. Welles is relied on as evidence of the conventionality of providing two sheets, one folded over the other and a second sheet providing wicket holes wherein the bag is provided with a bunching member. Welles teaches the wicket holes are used for holding the bag while filling and the bunching

member is used for sealing (Figure 5, Column 4, line 53 to Column 5, line 17). Therefore, it would have been obvious to include a bunching member on the bag of '211 since one would have been substituting one closing means for another for a food multilayer food bag.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761
November 4, 2002



MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700